IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 104 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
Versus
SINDHI SHANKERLAL M PANJWANI

Appearance:
1. Criminal Appeal No. 104 of 1993
MR ND GOHIL, APP for Appellant
MR LM CHHABLANI for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 08/07/2004

ORAL JUDGEMENT

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short) is directed against judgment dated October 22, 1992 rendered by the learned Judicial Magistrate First Class, Kalol, in Criminal Case No.3152 of 1987 by which the respondent is acquitted of the offences punishable under

Sections 16(1)(a)(i) and 7 of the Prevention of Food Adulteration Act, 1954 ("the Act" for short).

2. In July 1987, complainant, Sumanchandra Bothalal Trivedi, was discharging duties as Food Inspector of Kalol Municipality. The respondent is running a shop situated in Sindhi Bazaar, Station Road, Kalol. On July 31, 1987, at about 6.30 p.m., the Food Inspector had visited the shop of the respondent with Mr.H.K.Trivedi, who was then discharging duties as Sanitary Inspector of Kalol Municipality and found that the respondent was selling coconut oil. He was desirous of taking sample of the same for analysis. The Food Inspector had called Hiranand Asudomal to be present at the time when the sample was to be taken. After introducing himself, the Food Inspector had given notice in writing then and there to the respondent declaring his intention to purchase the article of food for the purpose of analysis. It may be stated that notice which was given to the respondent was in prescribed Form VI. After giving intimation, as referred to above, the Food Inspector had purchased 400 Gms. of coconut oil from the respondent and made payment of Rs.16=00 to the respondent for which the respondent had issued a receipt. The Food Inspector had, thereafter, divided the sample then and there into three parts and marked and sealed each part in three different clean and dry bottles. On the sample bottles, a slip bearing signatures of Food Inspector himself, the respondent and the panch witness was affixed. One of the samples was sent for analysis to the Public Analyst under intimation to the Local Health Authority whereas the remaining sample bottles were sent to the Local Health Authority for the purpose of subsection (2) of Section 11 and Section 13 of the Act. The sample sent to the Public Analyst was analysed and his report indicated that the the sample was not conforming to the standards laid down under the Prevention of Food Adulteration Rules, 1955 ("the Rules" for short). As the sample of food purchased from the shop of the respondent was found to be adulterated within the meaning of the Act, the Food Inspector had applied for written consent of the competent authority to lodge the prosecution against the respondent. The competent authority had granted written consent to institute prosecution against the respondent. Therefore, the Food Inspector had filed complaint against the respondent in the Court of learned Judicial Magistrate First Class, Kalol, and prayed the Court to convict the respondent of the offences punishable under Section 16(1)(a)(i) and 7 of the Act.

3. The complaint lodged by the Food Inspector was registered as Criminal Case No.3152 of 1987, and an order was passed by the learned Magistrate to issue summons to the respondent. On service of summons, the respondent had appeared before the Court and necessary papers relating to the case lodged against him were supplied to him. Before framing charge against the respondent, the learned Judge had recorded evidence of complainant, Sumanchandra Bothalal Trivedi, at Exh.13. Perusal of testimony of the complainant and the documents produced by him indicated, prima facie, that the respondent had committed offence under the Act. Therefore, the learned Magistrate had framed charge against the respondent at Exh.30. The charge was read over and explained to the respondent who had pleaded not guilty to the same and claimed to be tried. Therefore, the complainant had tendered further evidence in the case. Mr.Kantilal Hargovinddas Trivedi, who was then employed as Sanitary Inspector with Kalol Municipality, was examined as P.W-2 at Exh.34 whereas Ghanshyambhai Somabhai Soni, who was then Local Health Authority, was examined as P.W.-3 at Exh.39. After recording of evidence of the complainant and his witnesses was over, the learned Magistrate had explained to the respondent the circumstances appearing against him in the evidence of witnesses examined, and recorded his further statement as required by Section 313 of the Code. In his further statement, the claim of the respondent was that the complainant and witness Kantilal had taken samples in his absence and had completed the sealing procedure and the sample given by him was not food within the meaning of the Act. It may be stated that the respondent had examined Dilipkumar Chinubhai Sheth as D.W.-1 at Exh.51 to establish that coconut oil which was purchased by the Food Inspector from the shop of the respondent was not food within the meaning of the Act.

4. On appreciation of evidence adduced by the parties, the learned Magistrate held that though it was proved by the complainant that the quality and purity of article of food was below the prescribed standards and its constituents were present in the quantity not within the prescribed limits of variability, it was not proved that quality or purity of the article, which was below the prescribed standards, and variation in constituents had rendered the sample injurious to health and, therefore, the case of the prosecution was liable to fail. According to the learned Magistrate, Exh.14, which was notice served by the complainant by which the Food Inspector had declared his intention to purchase the sample of food for the purpose of analysis was not

bearing signature of the panch witness and, therefore, it was not proved that the complainant had complied with the provisions of Section 10(7) of the Act by calling one independent person to be present at the time when the sample was taken and sealed. It was further deduced by the learned Magistrate that it could not be proved by the complainant whether sealing and sampling procedure was undertaken in the shop of the respondent or outside his shop which in turn established that the provisions of Section 11 of the Act were not complied with by the complainant. Lastly, it was held by the learned Magistrate that no notice as contemplated under Section 13(2) of the Act was given to the respondent after institution of prosecution and, thereby valuable right conferred on the respondent by the said provisions was jeopardized which was fatal to the prosecution. In view of abovereferredto conclusions, the learned Judge has acquitted the respondent vide judgment dated October 22, 1992 giving rise to instant appeal.

5. Mr.N.D.Gohil, learned Additional Public Prosecutor for the State, contended that it is not the requirement of law that if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, the prosecution should further prove that quality or purity of the article which is below the prescribed standard or limits of variability in constituents of the article, is injurious to health and, therefore, the finding recorded by the learned Magistrate should be set aside. In support of this contention, the learned counsel has placed reliance on the decision in Smt.Manibai & Another v. The State of Maharashtra, A.I.R. 1974 SC 434. The learned Additional Public Prosecutor further pointed out that it is also not the requirement of law that notice to be given to the person from whom the sample is to be taken, must bear signature of panch witness and, therefore, the learned Judge was not justified in coming to the conclusion that the Food Inspector had failed to call one independent witness to be present at the time when the sample was taken from the respondent as notice Exh.14 was not bearing signature of the panch witness. According to the learned Additional Public Prosecutor, the evidence of the complainant establishes satisfactorily that he had called Hiranand Asudomal to remain present at the time of taking sample from the respondent and, therefore, the learned Judge was not justified in holding that the complainant had committed breach of provisions of Section 10(7) of the Act. The learned counsel of the appellant pointed out to the

Court that before recording of evidence of witnesses of the complainant was over, the complainant had submitted a pursis on December 18, 1991 at Exh.44 mentioning, inter alia, that Hiranand Asudomal, who had acted as panch witness, had expired at Ahmedabad on December 14, 1990 and, therefore, it was not possible to examine him as one of the witnesses in the case, and along with the said application, the complainant had also produced, a xerox copy of the death certificate issued by the competent authority under the provisions of the Registration of Birth & Deaths Act, 1969 which indicated that Hiranand Asudomal Thavandas Aswani had expired at Ahmedabad on December 14, 1990. After pointing out these relevant facts, it was argued that the panch witness could not be examined in the case because he had expired before his evidence could be tendered, but that does not affect the reliable assertion made by the Food Inspector that he had called Hiranand Asudomal to be present at the time when sample was taken and sealed, and as, in fact, Hiranand Asudomal, had remained present when the sample was taken, the finding that Section 10(7) was committed breach of deserves to be set aside. The learned counsel of the appellant emphasised that the assertion made by the Food Inspector that he had called Hiranand Asudomal to be present at the time when the sample was taken and sealed, gets corroboration from the testimony of witness, Kantilal Hargovinddas Trivedi, who was then Sanitary Inspector of the Municipality and, therefore, the learned Magistrate was not justified in coming to the conclusion that the provisions of Section 10(7) of the Act were not complied with by the complainant. It was urged by the learned counsel of the State Government that not only the Food Inspector had given notice in writing then and there of his intention to purchase the sample for the purpose of analysis, but he had divided the sample then and there into three parts and marked as well as sealed and fastened up each part in the manner prescribed and had also sent one part for analysis to the Public Analyst and remaining two parts to the Local Health Authority and, therefore, it is not understood as to why the learned Magistrate has come to the conclusion that the provisions of Section 11 of the Act were not complied with by the Food Inspector. What was argued was that the finding recorded by the learned Magistrate that the complainant had committed breach of provisions of Section 11 of the Act is contrary to the evidence on record and is, therefore, liable to be set aside. While dealing with breach of Section 13(2) of the Act, the learned Additional Public Prosecutor took pains to point out that after institution of prosecution against the respondent, a

copy of the report of result of analysis was forwarded by witness, Ghanshyamhai Somabhai Soni, to the respondent by registered Post A.D., whereas Exh.40, which is postal acknowledgment slip shows that in token of having received the copy of the report of analysis, the respondent had signed the same and, therefore, the finding of the learned Magistrate that the provisions of Section 13(2) of the Act were not complied with, should be set aside. It was argued that the learned Magistrate has failed to appreciate the evidence on record in its true perspective, and has recorded findings of facts which are contrary to the evidence on record and, therefore, the appeal should be accepted.

6. Mr.L.M.Chhablani, learned counsel of the respondent, did not support the finding recorded by the learned Magistrate to the effect that though the article of food was below the prescribed standards or its constituents were present in quantities not within the prescribed limits of variability, the prosecution was liable to fail as it had not proved that the quality or purity of the article of food which was below the prescribed standards or variation in constituents prescribed, was injurious to health. However, it was emphatically argued by the learned counsel of the respondent that the evidence on record does not establish that the Food Inspector had called one person to be present at the time when the sample was taken and, therefore, the acquittal of the respondent recorded by the learned Magistrate on the ground that there is breach of provisions of Section 10(7) of the Act should be upheld by the Court so also the learned counsel of the respondent did not support the finding recorded by the learned Magistrate to the effect that the Food Inspector had committed breach of the provisions of Section 11 of the Act nor could point out to this Court as to how and in which manner the Food Inspector had failed to comply with the provisions of Section 11 of the Act. After looking to the signature of the respondent on Exh.40, which is a postal acknowledgment receipt, and satisfying himself that Exh.40 bears signature of the respondent, no plea was advanced by the learned counsel of the respondent regarding so-called breach of provisions of Section 13(2) of the Act. However, what was contended by the learned counsel of the respondent was that the testimony of the Food Inspector shows that slip on the sample bottle was bearing signature of the Food Inspector, the respondent and the panch witness; whereas the testimony of witness, Ghanshyambhai Soni, indicates that the slip on the sample bottle was bearing signature of the Food

Inspector and the respondent, as a result of which it was not established by the prosecution that the sample bottle which was prepared at the spot was sent to the laboratory for analysis and, therefore, the judgment of the acquittal should be upheld by this Court. It was further argued by the learned counsel of the respondent that the testimony of the Food Inspector shows that the slip, which was affixed on the sample bottle, was bearing his signature, signature of the respondent and signature of the panch witness whereas the testimony of witness, Kantilal H.Trivedi at Exh.34 shows that there was no signature of the Food Inspector on the slip which was affixed on the sample bottle and, therefore, the case of the complainant that he had visited the shop of the respondent, and had taken the sample of coconut oil which was ultimately found to be adulterated, becomes highly doubtful. Lastly, it was argued that if the Court comes to a conclusion that commission of offences by the respondent punishable under Sections 16(1)(a)(i) and 7 of the Act is established, the respondent should be granted benefit of the Probation of Offenders Act as he is being convicted after a long period.

7. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

8. As noticed earlier, the first ground of acquittal recorded by the learned Magistrate is that the quality or purity of the article which was falling below the prescribed standard or presence of constituents in quantities which was not within the prescribed limits of variability, had not rendered the article of food injurious to health and, therefore, the prosecution was liable to fail. In this connection, it would be necessary to reproduce relevant part of Section 2 of the Act, which is as under:

"2. Definitions.- In this Act unless the context otherwise requires,-

(i-a) "adulterated" - an article of food shall be deemed to be adulterated-

xxx xxx xxx

(l) if the quality or purity of the article falls below the prescribed standards or it constituents are present in quantities not

within the prescribed limits of variability but which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to heath:

Provided that, where the quality or purity of the article, being a primary food has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation.- Where two or more articles of primary food are mixed together and the resultant article of food-

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health,

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause."

A bare reading of the abovequoted provisions makes it evident that if the quality or purity of the articles falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, the article of the food will have to be regarded as adulterated one whether fall in the quality or purity of the article below the prescribed standards or limits of variability of its constituents renders the article of food injurious to health or not. The distinction between clause (l) and clause (m) of Section 2(i-a) is that if an article of food is rendered injurious to health, case would fall under clause (l) and the minimum punishment prescribed for an article of food which is rendered injurious to health is imprisonment of one year whereas if an article of food is not rendered injurious to health, but is found to be adulterated within the meaning of clause (m) then the minimum punishment prescribed is imprisonment

for six months. Once it is proved by the prosecution that quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, commission of offence within the meaning of Section 2(i-a)(m) is complete and it is not necessary for the prosecution to further prove that because of fall in the quality or purity of the article below the prescribed standard or presence of its constituents in quantities not within the limits of variability prescribed by the statute is injurious to health. In Smt. Manibai & Anr. (supra), the Supreme Court has ruled that in a prosecution of sale of adulterated article of food, it is not for the prosecution to show that the article was deleterious to health and if so, how much harmful effect it would have upon the health of the person consuming it. According to the Supreme Court, all that is required to be shown is that the article of food in question was adulterated. The Supreme Court has explained in the said case that according to Section 2, an article of food shall be deemed to be adulterated if inter alia the quality or purity of the article falls below the prescribed limits and the prosecution need not further show that the adulterated article of food in question was deleterious to health. Again in K.Krishna Iyer v. State of Kerala, 1993 Cri. L.J. 2606, article of food `ice-stick' sold by accused was found to be not falling under any sub-clauses (e) to (l) of Section 2(i-a) of the Act nor containing an adulterant injurious to health. Under the circumstances, conviction of the accused under Section 16(1-A) of the Act was set aside by the Supreme Court. However, it was found that said article was containing artificial sweetener Saccharin without conforming to standards prescribed in Rules. The Supreme Court has ruled that if article of food does not conform to standards prescribed in Rules, it will have to be regarded as adulterated within meaning of Section 2(i-a)(m) and after so holding conviction of accused in that case was altered from Section 16(1-A) to Section 16(1)(a)(i) of the Act. On reading provisions of Section 2 of the Act, it becomes at once clear that the standards having been fixed, any person who deals in articles of food which do not conform with the said standards, contravenes the provisions of the Act. The fact that the sample was not injurious to health would not mean that it was not adulterated because there may be many kinds of adulteration and even though the adulterated article may not be injurious to health, it would still be adulterated for which the concerned person would be liable. Thus, the first ground of the

acquittal recorded by the learned Magistrate is not in accordance with law and, therefore, the same is hereby reversed.

9. The second ground which has weighed with the learned Magistrate in recording acquittal of the respondent is that the Food Inspector had committed breach of provisions of Section 10(7) of the Act by not calling one person to remain present at the time when the sample was taken. So far as this point is concerned, this Court finds that Food Inspector, Mr.S.B.Trivedi, has, in terms, stated that he had called Hiranand Asudomal to be present at the time when the sample was taken. According to the Food Inspector, the notice in Form No.VI was also served on the respondent in presence of panch witness Hiranand Asudomal, and that the sample was divided into three equal parts in presence of panch witness. What is mentioned by the Food Inspector in his testimony before the Court is that all the three samples were sealed in the manner prescribed in the presence of panch witness. Though the Food Inspector was searchingly cross-examined, nothing could be brought on record so as to doubt his assertion that he had called Hiranand Asudomal to be present at the time when the sample was taken. The assertion of the Food Inspector that he had called Hiranand Asudomal to be present at the time when the sample was taken from the respondent, stands completely corroborated by sworn testimony of Kantilal H. Trivedi, P.W.-2, Exh. 34, who was then Sanitary Supervisor of Kalol Municipality. Witness, Kantilal H. Trivedi, has, in terms, stated that the Food Inspector had called Hiranand Asudomal to be present at the time when the sample was taken and that panchnama regarding taking of sample and sealing the same was drawn in his presence and that in his presence, panch Hiranand Asudomal had signed the panchnama. Though this witness was also cross-examined by the defence, nothing could be brought on record which would raise a doubt about the statement made by this witness in his examination-in-chief to the effect that Hiranand Asudomal was called by the Food Inspector to be present at the time when the sample was taken and that the said panch witness was all throughout present till the panchnama was drawn. The learned Magistrate has come to the conclusion that the provisions of Section 10(7) of the Act were not complied with because, according to the learned Magistrate, the notice which was given by the Food Inspector to the respondent intimating that he was desirous of purchasing the sample for analysis was not bearing signature of the panch witness. Section 11(1)(a) of the Act requires that when

a Food Inspector takes a sample of food for analysis, he shall give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample. Rule 12 of the Rules, inter alia, provides that when a Food Inspector takes a sample of an article of food for the purpose of analysis, he shall give notice of his intention to do so in writing in Form VI, then and there, to the person from whom he takes the sample. Form No.VI set forth in Appendix to the Rules is as follows:

"FORM VI
(See rule 12)

To,
_____
_____

I have this day taken from the premises of ..... situated at ..... samples of the food specified below to have the same analysed by the Public Analyst, for .....

Details of food:

[Code Number and Serial Number of Local (Health) Authority]

Place ..... Food Inspector,
Date ..... Area ....."

A bare reading of the provisions of Section 11 of the Act read with Rule 12 of the Rules and contents of Form VI makes it evident that the notice is not required to be signed by the panch witness at all and but it is required to be signed only by the Food Inspector. Merely because, the signature of panch witness is not obtained on the statutory form in which the notice is required to be given to the person from whom the sample is taken, one cannot jump to the conclusion that the Food Inspector had failed to comply with the provisions of Section 10(7) of the Act. It may be mentioned that panch witness could not be examined as one of the witnesses because he had expired before his evidence could be tendered. However, his non-examination, which was beyond control of the complainant, does not make any dent in the evidence of the Food Inspector, which is supported by the testimony of Sanitary Supervisor that he had called deceased

Hiranand Asudomal to be present at the time when the sample was taken.

10. As explained in Rajinder Kumar v. State of H.P. & Anr., (2003) 11 SCC 120, obligation of Food Inspector under Section 10(7) of the Act is to "call" one or more persons to be present when he takes action and if the Food Inspector has called the persons to be present and asks them to affix their signatures after witnessing the sample, failure on the part of the persons so called to affix the signatures would not amount to non compliance of Section 10(7) of the Act. It is also well settled that even if panch witness is called to witness taking of sample but turns hostile, conviction can be based on the reliable testimony of the Food Inspector. Having regard to the nature of evidence on record, this Court has no hesitation in recording a finding that Food Inspector, Mr.S.B.Trivedi, had, in fact, called Hiranand Asudomal to be present at the time when the sample was taken and sealed and it is wrong to say that a panch witness was not called to be present at the time when the sample was taken merely because his signature was not obtained in the notice which was given in statutory form to the respondent. The finding recorded by the learned Magistrate that there was non compliance of Section 10(7) of the Act is also against weight of the evidence on record and, therefore, it is hereby reversed.

11. The third ground of acquittal recorded by the learned Magistrate is that the Food Inspector had failed to comply with the provisions of Section 11(1) of the Act. Section 11(1) of the Act which is relevant for the purpose of deciding the case reads as under:

"11. Procedure to be followed by Food Inspectors.- (1) When a Food Inspector takes a sample of food for analysis, he shall-

(a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed under Sec.14-A :

(b) except in special cases provided by rules under this Act, divide the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its

nature permits and take the signature or thumb impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed:

Provided that where such person refuses to sign or put his thumb impression the Food Inspector shall call upon one or more witnesses and take his or their signatures or thumb impressions, as the case may be, in lieu of the signature or thumb impression of such person:

(c) (i) send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority: and

(ii) send the remaining two parts to the Local (Health) Authority for the purpose of sub-section (2) of this section of sub-sections (2-A) and (2-E) of Sec.13.

(2) to (6) xxx xxx"

The Food Inspector has, in terms, stated in his deposition that he had given notice in writing to the respondent wherein his intention to purchase the sample for analysis was clearly mentioned. According to the Food Inspector, after giving intimation to the respondent in writing, he had purchased 400 Gms. of coconut oil from the respondent and paid the price of the same to the respondent. The Food Inspector has asserted that the price of the sample was Rs.16=00 and the respondent had issued a receipt in token of having received the price of the sample sold to him. It is further mentioned by the Food Inspector that after purchase of the sample, he had divided the same then and there into three parts and marked and sealed the same as prescribed by the Rules. It is categorically stated by him that thereafter, he had sent one of the parts for analysis to the Public Analyst under intimation to the Local Health Authority and remaining two parts to the Local Health Authority. In order to support his statements, which indicate compliance of Section 11, the Food Inspector had produced documentary evidence on record. The testimony of witness, Kantilal H. Trivedi, P.W.-2, Exh.34, shows that the Food Inspector had purchased the sample of food for analysis after giving notice in writing to the respondent and he had divided the same into three equal parts in the presence of panch witness. Thus, the assertion made by the Food Inspector

that he had complied with the provisions of Section 11(1)(a) and 11(1)(b) of the Act, stands completely corroborated by the reliable and cogent evidence of witness, Kantilal H. Trivedi. The assertion made by the Food Inspector that he had sent one of the parts for analysis to the Public Analyst gets corroboration from the report of analysis whereas his assertion that remaining two parts were sent to the Local Health Authority gets support from the testimony of witness, Ghanshyambhai Soni, P.W.-3, Exh.39, who was at the relevant time Local Health Authority. On scrutiny and analysis of evidence of three witnesses examined by the prosecution, it is evident that the Food Inspector had complied with the provisions of Section 11 of the Act. The learned counsel of the respondent could not point out to the Court as to which provision of Section 11 of the Act was not complied with by the Food Inspector while taking the sample. The finding recorded by the learned Magistrate to the effect that the Food Inspector had committed breach of provisions of Section 11(1) of the Act is not only not borne out from the record of the case, but is contrary to positive evidence on record. Under the circumstances, the said finding is liable to be set aside, and is, accordingly, set aside.

12. Yet another reason recorded by the learned Magistrate for acquitting the respondent is that there is breach of provisions of Section 13(2) of the Act. Section 13(2) of the Act, inter alia, requires that after institution of prosecution against person from whom the sample of the article of food was taken, the Local Health Authority should forward a copy of report of the result of analysis to the said person. The sworn testimony of witness, Ghanshyambhai Soni, would indicate that at the relevant time, he was Local Health Authority and had forwarded a copy of the report of result of the analysis to the respondent from whom the sample of article of food was taken for analysis. According to him, the report was forwarded by R.P.A.D., and he had produced acknowledgment receipt at Exh.40. Though witness, Ghanshyambhai Soni, has stated in his cross-examination that Exh.40 was not bearing signature of the respondent, on verification of record by this Court, it is found that Exh.40 bears the signature of the respondent. After scrutinising Exh.40 critically, the learned counsel of the respondent, in terms, agreed before the Court that Exh.40 bears the signature of the respondent. In order to satisfy his conscious, the learned advocate of the respondent had compared the signature of the respondent appearing on Exh.40 with the signature of the respondent on his Vakalatnama and on

comparison, the learned counsel of the respondent was satisfied that Exh.40 bears signature of the respondent. Thus, the postal acknowledgment slip, in terms, establishes that the report of analysis was forwarded by the Local Health Authority to the respondent. It may be stated that the prosecution in this case was instituted on November 4, 1987, which is quite evident from the contents of complaint Exh.21 whereas copy of the report of analysis was forwarded to the respondent along with forwarding letter dated November 16, 1987 which is produced at Exh.29. Thus, the finding recorded by the learned Magistrate that the provisions of Section 13(2) of the Act were not complied with is totally erroneous and contrary to the evidence on record.

13. No attempt was made by the learned counsel of the respondent to convince this Court that the provisions of Section 13(2) of the Act were not complied with by the Local Health Authority. Having regard to the totality of the facts of the case, this Court is of the firm opinion that no breach of Section 13(2) of the Act was committed by the Local Health Authority and the finding contrary to the evidence recorded by the learned Magistrate is liable to be set aside, and is accordingly set aside.

14. This brings the Court to consider the question whether the sample bottle sealed at the spot had reached the office of the Public Analyst. According to the learned counsel of the respondent, the evidence of the Food Inspector shows that the slip, which was affixed on the sample bottle, was bearing signature of himself, the respondent and the panch witness whereas the evidence of Mr.Soni, indicates that the slip which was affixed on the sample bottle was bearing signature of the Food Inspector and that of the respondent, but not of the panch witness and, therefore, the sample bottle bearing the signature of the panch witness had not reached the office of the Public Analyst. It may be stated that the report of the Public Analyst has been admitted in the evidence in view of Section 13(5) of the Act, but at no point of time, a request was made on behalf of the respondent to call the Public Analyst for cross-examination to establish that the sample, which was bearing three signatures, was not received by the office of the Public Analyst. It may be stated that Mr.Soni was Local Health Authority at the relevant time. It was not the function of Mr.Soni to scrutinise the bottles etc. The sample of food article was taken from the respondent on July 31, 1987 whereas testimony of Mr.Soni was recorded on November 26, 1991, i.e. after a

pretty long time. Mr.Soni could not specify before the Court as to what was the special reason for him to notice that two parts which were sent to the Local Health Authority were not bearing the signature of panch witness. On close scrutiny of his evidence, it becomes evident that he has tendered the evidence before the Court in a casual and carefree manner. In fact, though Exh.40 is bearing signature of the respondent which, in turn, indicates that Section 13(2) of the Act was complied with, this witness had audacity to state before the Court that Exh.40 was not bearing signature of the respondent. Having regard to the facts of the case, the statement made by this witness in his cross-examination that the slip which was affixed on one of the bottles was not bearing signature of panch witness does not inspire confidence of the Court nor does it make any dent in assertion made by the Food Inspector that the slip bearing signature of himself, the respondent and the panch witness was affixed on the sample bottle and that said sample bottle was sent to Public Analyst for analysis. Thus, identity of the sample bottle is not in doubt at all and no benefit can be given to the respondent on the basis that one of the parts of sealed sample at the spot was not sent to the office of the Public Analyst for analysis.

15. Similarly, the contention that testimony of Kantilal Trivedi to the effect that slip bearing signature of the respondent and the panch witness was affixed on the sample bottle probabilises the defence that the sample of food as claimed by the Food Inspector was never taken, has no merits. It is true that witness, Mr.Kantilal H. Trivedi, has stated that slip bearing signature of the respondent and panch witness was affixed on the sample bottle. However, he has not stated whether the said slip was signed by the Food Inspector or not. In absence of positive evidence led by him to the effect that the slip was not signed at all by the Food Inspector, it would not be prudent to jump to the conclusion that the slip, which was also bearing signature of the Food Inspector was not affixed on the sample bottle and that no sample, in fact, was taken from the respondent. Testimony of the Food Inspector, which is found to be trustworthy, clearly establishes that after giving notice in writing, as required by law, he had purchased the sample of food from the respondent for analysis, which was ultimately found to be adulterated. His evidence further shows that he had also signed the slip along with the respondent and panch witness and that the said slip was affixed on the sample bottle. The record does not show that though the sample

was not taken from the respondent, a false case was foisted on him. Thus, the plea that, in fact, no sample of food was taken from the respondent, as was claimed by the Food Inspector and, therefore, the appeal should be dismissed, cannot be accepted.

16. The net result of the above discussion is that the commission of offences punishable under Sections 16(1)(a)(i) and 7 of the Act by the respondent is clearly made out and the appeal, therefore, will have to be allowed.

17. For the foregoing reasons, the appeal is allowed. Judgment and order dated October 22, 1992 rendered by the learned Judicial Magistrate First Class, Kalol, in Criminal Case No.3152 of 1987 acquitting the respondent of the offences punishable under Sections 16(1)(a)(i) and 7 of the Act is hereby set aside. Instead, the respondent is convicted of the offences punishable under Sections 16(1)(a)(i) and 7 of the Act.

18. On the question of sentence to be imposed on the respondent, this Court has heard the learned Additional Public Prosecutor and the learned counsel of the respondent. The learned counsel of the respondent pleaded that having regard to the nature of contravention and passage of time, the respondent should be granted benefit of the provisions of the Probation of Offenders Act, 1958 or Section 360 of the Code. According to the learned counsel of the respondent, this is the first offence committed by the respondent, which is punishable under the provisions of the Act and as his conviction is likely to have adverse effect not only on him, but also on his family, lenient view should be taken while imposing punishment on the respondent.

While considering this plea raised by the learned counsel of the respondent, the Court cannot ignore mandatory provisions of Section 20-AA of the Act, which are as under:

> "20-AA. Application of the Probation of Offenders Act, 1958 and Sec. 360 of the Code of Criminal Procedure, 1973. - Nothing contained in the Probation of Offenders Act, 1958 (20 of 1958), or Sec. 360 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age."

The age of the respondent is about fifty years. Therefore, no benefit of the provisions contained in the Probation of Offenders Act, 1958 or Section 360 of the Code can be granted to the respondent. Section 16 of the Act provides for penalties/punishments. It, inter alia, states that if any person sales or distributes any article of food which is adulterated within the meaning of sub-clause (m) of Clause (i-a) of Section 2, he shall in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months, but which may extend to three years, and with fine which shall not be less than one thousand rupees. Proviso to sub-section (1) of Section 16 of the Act, inter alia, stipulates that if the offence is under subclause (i) of clause (a) and is with respect to an article of food, being primary food, the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees. It is not the case of the learned counsel of the respondent that the sample of food which was taken by the Food Inspector from him and which was ultimately found to be adulterated, was primary food within the meaning of the Act. Under the circumstances, proviso is not applicable to the facts of the case, and the Court has no alternative, but to impose minium punishment of imprisonment for a term which cannot be less than six months and fine which cannot be less than Rs.1000=00. As this Court has heard the learned counsel of the respondent on the point of punishment to be imposed on the respondent and proposes to impose minimum sentence stipulated by the provisions of the Act, it is not necessary to issue any personal notice to the respondent for hearing him on the question of sentence.

Thus, for the commission of offences punishable under Sections 16(1)(a)(i) and 7 of the Act, the respondent is sentenced to suffer imprisonment for a term of six months and fine of Rs.1,000=00 (Rs.One Thousand Only), in default, S.I. for three months.

19. At this stage, the learned counsel of the respondent prays that reasonable time be granted to the respondent to surrender to the authority. Having regard to the facts and circumstances of the case, time of eight weeks is granted to the respondent to surrender to the authority.

(J.M. Panchal, J.)

Rajendra